

June 25, 2019

Dear Counsel for the *Flores* Class,

We are experts in medical ethics who have devoted our careers to rigorous analysis of challenging ethical issues relevant to health and well-being, to advancing the ethical treatment of all people and especially the most vulnerable, and to examining historical failures to uphold basic ethical principles so that we can prevent future atrocities. It does not take any special expertise, however, to recognize that the conditions in which children are being detained at U.S. border facilities are ethically abhorrent and demand immediate remediation.

According to numerous reports from on-site visits and interviews, children and others under the care of the U.S. government are being held in unsanitary conditions, without access to clean water or adequate nutrition, kept in frigid temperatures without the basic environmental conditions to allow them to sleep, and denied access to even the simplest emergency medical care. There have been outbreaks of influenza and lice; in the absence of basic sanitation, other public health threats will surely follow. As ethicists, we can say with absolute certainty that this is not a hard case. We should not have to convince the U.S. government of its obvious ethical obligations to protect vulnerable children in its custody or of its obvious failure to satisfy those obligations to date. And yet, it appears that argument is needed.

The basic principles of medical ethics entail respect for persons, avoidance of harm, and fair treatment. These principles apply whenever individual and community health are at issue, as is the case here where the physical and mental health of detainees are being placed at extreme risk. These risks are greatest for children, who may suffer serious long-term consequences as a result of the conditions in which they are being held. The principles are blind to citizenship and to politics. Yet the U.S. government's treatment of detainees violates each of the core principles of medical ethics.

Respect for persons refers to the notion that all human beings have inherent moral value. As such, they deserve to have their autonomy respected - and when their autonomy is impaired due to age, detention, or any other reason, they deserve to be protected from exploitation and mistreatment. At root, respect for persons is the familiar notion that we ought to treat others as we wish to be treated. This principle is reflected in the United Nations Universal Declaration of Human Rights, which maintains that everyone is entitled to "the right to a standard of living adequate for . . . health and well-being . . . including food, clothing, housing and medical care[.]" as well as to the avoidance of "cruel, inhuman or degrading treatment or punishment." The Declaration goes on to provide that "[m]otherhood and childhood are entitled to special care and assistance." Especially when people have been deprived of the ability to satisfy their own basic needs and those of their children, the entity responsible for such deprivation takes on special moral duties to ensure that those needs are being met.

There is no interpretation under which what is happening at these detention facilities could be described as respectful of the humanity of those detained. Denying children such basic dignities as the ability to wash their hands after using the bathroom, closing bathrooms as punishment, denying mothers the ability to sanitize their babies' bottles, withholding toothbrushes and the ability to bathe

for days on end, purposefully exposing children to uncomfortably cold temperatures, failing to provide clean drinking water and age-appropriate foods, refusing to facilitate adequate sleep, forcing mothers to beg for medical care for their infants, instilling fear in those who might protest when their basic needs are not being satisfied – these are all behaviors designed to degrade and deny the humanity of the detainees. They are entirely without justification, reflecting deep ethical violations that must be stopped.

Closely related to respect for persons is the obligation to avoid causing unnecessary harm. Yet each of the ethical violations described above is causing harm to the detainees. In particular, the absence of adequate sanitation is exposing them to an unnecessary and unacceptable risk of infectious disease, while the absence of adequate nutrition and sleep is likely to weaken children to such an extent that any health risks will be seriously exacerbated. When these children succumb to disease, experience to date suggests that medical care will not be forthcoming. If parents were to subject their children to such outright neglect, they would be charged with child endangerment, and the responsible agencies would remove the children from their custody. The U.S. government has prevented detained parents from adequately caring for their detained children, while simultaneously failing to execute its resultant duty of care. This neglect is a grave ethical wrong and must not be tolerated.

Finally, the principle of justice demands both fairness and equity. However, the U.S. government's current policy and practice lack any sense of fairness or proportionality, intentionally inflicting severe physical harm and emotional distress on children ranging in age from infancy to adolescence in order to discourage their parents for seeking refuge in our country and to punish them for doing so. No child should ever be punished to manipulate the behavior of their parents, not to discourage criminal behavior and certainly not to discourage those pursuing legal pathways to claim asylum. As a matter of equity, it is without question that Americans would not stand for the children of our own citizens being used in this manner, even to prevent behavior much more detrimental to our society. The detained children are no less worthy of protection. Every child, regardless of citizenship, is imbued with the same fundamental humanity and basic needs. Failure to treat them with the same respect and compassion that we demand for American children is beyond unjust. It is a cruel abdication of our most fundamental commitment to other human beings.

History has demonstrated the dangers in treating any person as less than human. As bioethicists, we feel a deep responsibility to call out such dangerous behavior, especially when it is being carried out by our own government. No matter where they came from, these are children, the most vulnerable members of any society. As a matter of common decency, they deserve care, protection, and acknowledgment of their humanity. As a matter of medical ethics, they deserve to be housed in conditions that will preserve their health and the health of others, and they deserve appropriate medical care when needed. Moreover, medical staff must be allowed to care for these children as whole people. This means that they must not be expected to restrict their attention only to responding to dire health emergencies, but rather given the authority and resources needed to resolve the root causes of these emergencies and to address the full scope of the children's health needs.

What is legal is not always ethical, but in this context, the U.S. government is behaving neither legally or ethically. It must heed its ethical responsibilities rather than arguing over the semantics of “safe and sanitary” conditions when the spirit of the *Flores* settlement agreement is clearly not being met. We support your efforts to urge the court to require that the government take every necessary step for the protection of these children and other detainees, with sufficient specificity and oversight to remediate current conditions and to prevent similar problems from recurring in the future.

Sincerely,
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We, the undersigned ethicists, endorse the principles and share the deep concerns articulated in this letter. [Closed 3:30 pm ET, 06/25/19]

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810. William Doscher, MD, Northwell Health
811. Emily Damron, LCSW, Psychoanalytic Psychotherapy Study Center, NYC
812. Susan L. Rose, PhD, William Alanson White Institute, New York
813. Robert Cook-Deegan, Arizona State University
814. Ashley Woodards, BS, BA, University of Pennsylvania
815. Michael Stocker, PhD, Syracuse University
816. William Smith, MD, PhD, University of Pennsylvania
817. Elaine Levy Cooper, PhD, New York University, The Object Relations Institute, New York
818. Sarah L. Lusk, PhD
819. Bonnie Perlmutter, PhD
820. Marion Rudin Frank, EdD, Professional Psychology Services
821. Lauren Miller, PsyD (private practice)
822. Elliot Jurist, PhD, The City College of New York, CUNY
823. Lucretia Slaughter, PhD, Harvard
824. Lynette S. Danylchuk, PhD, International Society for the Study of Trauma and Dissociation
825. Sheila Upadhyay, MD, Children's Hospital of Philadelphia
826. Nancy Caro Hollander, PhD, Psychoanalytic Institute of Northern California
827. Toby B. Kaufman, PhD
828. Patricia Sherman, PhD, LCSW, LICSW, Kean University
829. Carolyn Carbone, Private Practice, PhD
830. Yes. Dee Unterbach, DSW, LCSW
831. Lynn Higgins, LCSW, Suffolk Institute for Psychotherapy and Psychoanalysis, Long Island, NY

832. B. Sue Epstein, PhD

833. Diane L. Kopan, MSW, LCSW, Chicago Private Practice

834. Ann Singer, PhD, private practice, Branford and Waterford, Connecticut

835. Megan L. Kovac, PhD, Weill Cornell Medicine

836. Susan Bram, PhD, New York Hospital

837. Ilina Singh, PhD, University of Oxford